

SENATE BILL 1779

By McNally

AN ACT to amend Tennessee Code Annotated, Title 8,
Chapter 34; Title 8, Chapter 35; Title 8, Chapter
36 and Title 8, Chapter 37, relative to retirement.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-34-101(14)(E), is amended by deleting the language in the subdivision in its entirety and substituting instead the following:

(E) Notwithstanding this subdivision (14) or any other law to the contrary, "earnable compensation" does not include compensation that exceeds the maximum dollar limitation imposed by § 401(a)(17) of the Internal Revenue Code, as adjusted for cost-of-living increases in accordance with § 401(a)(17)(B) of the Internal Revenue Code. For any person becoming a member of the retirement system before July 1, 1996, the dollar limitation under § 401(a)(17) of the Internal Revenue Code, shall not apply to the extent the amount of compensation which is allowed to be taken into account under the system would be reduced below the amount which was allowed to be taken into account under the system as in effect on July 1, 1993;

SECTION 2. Tennessee Code Annotated, Section 8-34-101, is further amended by adding the following as new, appropriately designated subdivisions:

() "Internal Revenue Code" means the Internal Revenue Code of 1986, codified in United States Code, title 26, as amended;

() "Limitation year" means, for testing purposes under § 415 of the Internal Revenue Code, the calendar year;

() "Plan year" means the fiscal year commencing July 1;

SECTION 3. Tennessee Code Annotated, Section 8-34-201, is amended by designating the current language as subsection (a) and adding the following as a new subsection (b):

(b) The retirement system is established as a qualified defined benefit plan under chapters 34-37 of this title, as amended, pursuant to §§ 401(a) and 414(d) of the Internal Revenue Code, or such other provision of the Internal Revenue Code as applicable, and applicable United States department of the treasury regulations and other guidance.

SECTION 4. Tennessee Code Annotated, Section 8-34-604, is amended by adding the following as a new, appropriately designated subsection:

(e) Notwithstanding the foregoing, sick leave conversions shall be permitted only if:

(1) The leave is for unused accrued paid time off for sick leave or for comparable paid-time-off under an established leave policy without regard to whether the leave is due to illness or incapacity;

(2) The leave policy qualifies as a bona fide sick leave plan for purposes of § 409A of the Internal Revenue Code, and Treasury Regulation § 1.409A-1(a)(5);

(3) The plan provides for service credit for a member's unused paid time off; provided, that the eligibility requirements for participation in the plan do not permit an employee to become a member only in the plan year in which the member terminates employment;

(4) The conversion is automatic and the member has no right to request a cash payment;

(5) The unused paid time off is converted to service credit under a specified formula which satisfies the definitely determinable standard of Treasury Regulation § 1.401-1(b)(1)(i);

(6) The plan otherwise provides for service credit unrelated to the conversion of any member's unused paid time off; and

(7) The member's annual benefit, as adjusted by the leave conversion, does not exceed the limit under § 415(b) of the Internal Revenue Code.

SECTION 5. Tennessee Code Annotated, Section 8-34-605, is amended by adding the following as new, appropriately designated subsections:

() Effective December 12, 1994, notwithstanding any other law to the contrary, contributions, benefits, and service credit with respect to qualified military service are governed by § 414(u) of the Internal Revenue Code, and the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. §§ 4301 et seq.).

() Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in the Uniformed Services Employment and Reemployment Rights Act of 1994, to the extent required by § 401(a)(37) of the Internal Revenue Code, survivors of a member in a state or local retirement or pension system, are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.

() Beginning January 1, 2009, to the extent required by § 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments, as defined under 26 U.S.C. § 3401(h)(2), from an employer shall be treated as compensation for purposes of applying the limits on annual additions under § 415(c) of the Internal Revenue Code. This subsection shall be applied to all similarly situated individuals in a reasonably equivalent manner.

SECTION 6. Tennessee Code Annotated, Section 8-36-102, is amended by deleting the existing language of the section in its entirety and substituting instead the following:

(a) Notwithstanding any other law to the contrary, no retirement allowance payable to any member retiring under the provisions of the consolidated retirement system or any superseded system after June 30, 1975, shall exceed the average final compensation or benefit base of such member; provided, that this section shall not be construed to prevent any increase in retirement allowance of such member in excess of the final average compensation or benefit base when such increase is in accordance with § 8-36-701.

(b) Notwithstanding any other law to the contrary, the member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of § 415 of the Internal Revenue Code, for a qualified plan.

(c) Participation in other qualified plans: aggregation of limits.

(1) The limit under § 415(b) of the Internal Revenue Code with respect to any member who at any time has been a member in any other defined benefit plan as defined in § 414(j) of the Internal Revenue Code, maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

(2) The limit under § 415(c) of the Internal Revenue Code with respect to any member who at any time has been a member in any other defined contribution plan, as defined in § 414(i) of the Internal Revenue Code, maintained by the member's employer in this plan shall apply as if the total

annual additions under all such defined contribution plans in which the member has been a member were payable from one (1) plan.

(d) Basic § 415(b) limitation. Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in § 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in § 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in § 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement system. In no event shall a member's annual benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Internal Revenue Code and the regulations thereunder.

(e) Effect of COLA on § 415(b) testing. Effective on and after January 1, 2009, for purposes of applying the limits under § 415(b) of the Internal Revenue Code (the "limit") to a member with no lump sum benefit, the following shall apply:

(1) A member's applicable limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any cost-of-living adjustment under § 8-36-701;

(2) To the extent that the member's annual benefit equals or exceeds the limit, the member shall no longer be eligible for cost-of-living increases until such time as the benefit plus the accumulated increases are less than the limit; and

(3) Thereafter, in any subsequent limitation year, a member's annual benefit, including any cost-of-living increases under § 8-36-701, shall be tested under the then applicable benefit limit including any adjustment to the §

415(b)(1)(A) of the Internal Revenue Code dollar limit under § 415(d) of the Internal Revenue Code, and the regulations thereunder.

(f) Section 415(c) Limitations. For purposes of applying § 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable shall be compensation as defined by Treasury Regulation § 1.415(c)-2(d)(3), or successor regulation; provided, however, that member contributions picked up under § 414(h) of the Internal Revenue Code shall not be treated as compensation. A member's compensation for purposes of this subsection (f) shall not exceed the annual limit under § 401(a)(17) of the Internal Revenue Code, which applies for that year. If the annual additions for any member for a plan year exceed the limitation under § 415(c) of the Internal Revenue Code, the excess annual addition shall be corrected as permitted under the Employee Plans Compliance Resolution System or similar IRS correction program.

SECTION 7. Tennessee Code Annotated, Section 8-36-201, is amended by deleting the language in the section in its entirety and by substituting instead the following:

(a) Group 1.

(1) Any member in Group 1 shall be one hundred percent (100%) vested in the member's service retirement benefit upon attainment of sixty (60) years of age or upon completion of thirty (30) years of creditable service; provided, that any member of Group 1 who became a member of the retirement system on or after January 1, 1992, must have five (5) years of creditable service.

(2) Any member in Group 1 who has creditable service in a Group 1 position covered by the mandatory retirement provisions of § 8-36-205 and who is entitled to the supplemental bridge benefit established pursuant to § 8-36-211 shall be eligible for service retirement upon attainment of fifty-five (55) years of

age and upon completion of twenty-five (25) years of creditable service; provided, that the service rendered while the member was in a Group 1 position covered by the mandatory retirement provisions shall be independent of all other creditable service for the purpose of calculating the member's retirement benefits under § 8-36-206.

(b) Group 2.

(1) Any member in Group 2 shall be one hundred percent (100%) vested in the member's service retirement benefit upon satisfying one (1) of the following:

(A) Attainment of sixty (60) years of age; provided, that any member of Group 2 who became a member of the retirement system on or after July 1, 1979, must have ten (10) years of creditable service; or

(B) At any age upon completion of thirty (30) years of creditable service; provided, that this subdivision (b)(1)(B) shall be optional for political subdivisions participating under chapter 35 of this title.

(2)

(A) Any member in Group 2 shall be eligible for an unreduced service retirement upon attainment of fifty-five (55) years of age or completion of twenty-five (25) years of creditable service; provided, that within ninety (90) days of July 1, 1985, such member irrevocably elects to contribute five percent (5%) of such member's earnable compensation in addition to the contributions required by § 8-37-202. An employee or elected or appointed official of this state or any political subdivision thereof who is convicted in any state or federal court of a felony arising out of the employee's or official's employment or official capacity

constituting malfeasance in office shall forfeit that employee's or official's retirement benefits in accordance with § 8-35-124.

(B)

(i) Any Group 2 member who elected to come under subdivision (b)(2)(A) and who continues in service after age fifty-five (55) and after completion of twenty-five (25) years of creditable service, or after completion of thirty (30) years of creditable service regardless of age shall be paid the additional contributions made by such member under subdivision (b)(2)(A) within ninety (90) days after the member's filing with the retirement division a written request therefor. Any Group 2 member filing such a request shall cease to make and have deducted from such member's compensation the additional contributions required under subdivision (b)(2)(A).

(ii) This subdivision (b)(2)(B) does not apply to any member whose Group 2 service was rendered to a political subdivision unless the governing body of such political subdivision passes a resolution authorizing the return of contributions pursuant to this subdivision (b)(2)(B).

(c) Group 3. Any member in Group 3 shall be one hundred percent (100%) vested in the member's service retirement benefit upon attainment of sixty-five (65) years of age; provided, that any member of Group 3 who became a member of the retirement system on or after July 1, 1979, must have ten (10) years of creditable service. Any member in Group 3 shall be eligible for an unreduced service retirement

upon attainment of fifty-five (55) years of age and completion of twenty-four (24) years of creditable service or upon completion of thirty (30) years of creditable service.

(d) Group 4. Any member in Group 4 shall be one hundred percent (100%) vested in the member's service retirement benefit upon attainment of sixty (60) years of age with eight (8) years of creditable service. Any member in Group 4 shall be eligible for an unreduced service retirement upon the attainment of fifty-five (55) years of age with twenty-four (24) years of creditable service.

(e) No member of the general assembly shall be eligible for a retirement allowance before fifty-five (55) years of age except in the case of a disability.

(f) Any state general employee shall be one hundred percent (100%) vested in the employee's service retirement benefit upon attainment of sixty (60) years of age and the establishment of a minimum of seven (7) years of creditable service rendered during twenty (20) years of part-time employment.

(g)

(1) Notwithstanding any other law to the contrary, any member in Group 1 who was previously a member of the superseded state retirement system in a classification that provides a service retirement benefit after twenty-five (25) years of service shall be eligible for a service retirement benefit upon completion of twenty-five (25) years of creditable service; provided, that such member must have reestablished service withdrawn from such superseded system and that within ninety (90) days of July 1, 1989, such member irrevocably elects to contribute five percent (5%) of such member's earnable compensation in addition to the contributions required by § 8-37-202.

(2) Any Group 1 member who elected to come under subdivision (g)(1) and who continues in service after completion of thirty (30) years of creditable

service shall be paid the additional contributions made by such member under subdivision (g)(1) within ninety (90) days after the member's filing with the retirement division a written request therefor. Any Group 1 member filing such a request shall cease to make and have deducted from such member's compensation the additional contributions required under subdivision (g)(1).

(h) A member shall be one hundred percent (100%) vested in the member's accumulated contributions at all times.

(i) In the event of a full or partial termination of, or a complete discontinuance of employer contributions to, the plan, the accrued benefits of the affected members under the plan shall be one hundred percent (100%) vested and nonforfeitable to the extent funded and to the extent required by federal law.

(j) In conformity with § 401(a)(8) of the Internal Revenue Code, any forfeitures of benefits by members or former members shall not be used to pay benefit increases. However, such forfeitures shall be used to reduce employer contributions.

SECTION 8. Tennessee Code Annotated, Section 8-36-203, is amended by deleting the language in the section in its entirety and by substituting instead the following:

The retirement system shall pay all benefits in accordance with a good faith interpretation of the requirements of § 401(a)(9) of the Internal Revenue Code, and the regulations in effect under that section, as applicable to a governmental plan within the meaning of § 414(d) of the Internal Revenue Code. The retirement system is subject to the following provisions:

(1) Any member eligible to retire may set the effective date of the member's retirement at any date within one hundred fifty (150) days before or after the date that the member's application is filed with the board; provided, that

such effective date of retirement follows the date of the member's separation from service;

(2) Distribution of a member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the member attains age seventy and one-half (70½) or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as required by this subsection in the applicable form provided in § 8-36-206; and

(3) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of § 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation § 1.401(a)(9)-6, Q&A-2.

SECTION 9. Tennessee Code Annotated, Section 8-36-601, is amended by adding the following as a new, appropriately designated subsection:

() Effective as of July 1, 1989, the retirement system shall determine the amount of any optional retirement allowance on the basis of actuarial assumptions adopted by the board of trustees; such benefits shall not be subject to employer discretion. The actuarial assumptions adopted by the board for this purpose are incorporated as part of the plan document.

SECTION 10. Tennessee Code Annotated, Section 8-36-906, is amended by adding the following as new, appropriately designated subsections:

() A member in the defined benefit component of the hybrid plan shall be one hundred percent (100%) vested in the member's service retirement allowance upon

attaining the normal retirement age of sixty-five (65) with at least five (5) years of creditable service, except that if such member is:

(1) covered by the mandatory retirement provisions of § 8-36-205, then the normal retirement age of sixty (60) with at least five (5) years of creditable service;

(2) Serving as the attorney general and reporter, a district attorney general, district public defender, or state judge, then the normal retirement age of sixty (60) with eight (8) years of creditable service; or

(3) A member of the general assembly, then the normal retirement age of sixty (60) with four (4) years of creditable service.

() A member who leaves the service of the employer before reaching normal retirement age but after completing at least five (5) years of creditable service shall have a vested right to accrued benefits from the plan.

() A member shall be one hundred percent (100%) vested in the member's accumulated contributions at all times. A member in the hybrid plan shall be one hundred percent (100%) vested in the employee and employer contributions under the defined contribution component of the hybrid plan at all times.

() In the event of a full or partial termination of, or a complete discontinuance of employer contributions to the plan, the accrued benefits of the affected members under the plan shall be one hundred percent (100%) vested and nonforfeitable to the extent funded and to the extent required by federal law.

() In conformity with § 401(a)(8) of the Internal Revenue Code, any forfeitures of benefits by members or former members shall not be used to pay benefit increases. However, such forfeitures shall be used to reduce employer contributions.

SECTION 11. Tennessee Code Annotated, Section 8-37-104(f), is amended by deleting the language in the subsection in its entirety and by substituting instead the following:

(f) The board may adopt a group trust instrument for the purpose of pooling funds of the retirement system with other assets in the custody of the state treasurer, solely for investment purposes, that consist exclusively of assets of pension and profit sharing trusts qualified under § 401(a) of the Internal Revenue Code, individual retirement accounts that are exempt under § 408(e) of the Internal Revenue Code, eligible governmental plans that meet the requirements of § 457(b) of the Internal Revenue Code, and governmental plans under § 401(a)(24) of the Internal Revenue Code, as permitted under Rev. Rul. 81-100, as modified by Rev. Ruls. 2004-67, 2008-40, 2011-1, and 2014-24 or subsequent guidance. For this purpose, a trust includes a custodial account or separate tax-favored account maintained by an insurance company that is treated as a trust under § 401(f) or under § 457(g)(3) of the Internal Revenue Code. Such group trust declaration shall, upon its adoption by the board, convert the trust established for the retirement system into the group trust. The board will act as trustee for the group trust under the terms and conditions of the group trust declaration. The board may amend the terms of the group trust from time to time. The terms of the group trust, including any subsequent amendments, are hereby incorporated by reference and made a part of the retirement system. Simultaneously with the adoption of the group trust declaration, there shall be established a sub trust for the retirement system which will exclusively hold all of the assets of the retirement system and shall not be used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the retirement system. On the date of creation of the group trust, one hundred percent (100%) of the interest in the group trust will be allocable to the sub trust for the retirement system, and the value of the sub trust

maintained by the group trust for the retirement system, determined in accordance with generally recognized valuation procedures. The assets of the sub trust invested in the group trust shall be subject to all the provisions of the group trust instruments establishing and governing such trust.

SECTION 12. Tennessee Code Annotated, Title 8, Chapter 37, Part 1, is amended by adding the following as a new, appropriately designated section:

The assets of the plan shall never inure to the benefit of an employer and shall be held for the exclusive purposes of providing benefits to members and their beneficiaries and defraying reasonable expenses of administering the plan.

SECTION 13. Tennessee Code Annotated, Section 8-37-210(c), is amended by deleting the language in the subsection in its entirety and substituting instead the following:

(c) Distribution of a member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the member attains age seventy and one-half (70½) or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as required by this rule in the applicable form provided in § 8-36-206.

SECTION 14. Tennessee Code Annotated, Section 8-37-219, is amended by deleting the language in the section in its entirety and substituting instead the following:

(a) For purposes of compliance with § 401(a)(31) of the Internal Revenue Code, this section applies notwithstanding any other law to the contrary that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) For purposes of this section:

(1) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee;

(2) "Distributee" means an employee or former employee. "Distributee" includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in § 414(p) of the Internal Revenue Code. Effective April 16, 2010, "distributee" also includes a nonspouse beneficiary who is a designated beneficiary as defined by § 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity;

(3) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(A) A qualified retirement plan described in § 401(a) of the Internal Revenue Code;

(B) An annuity plan described in § 403(a) of the Internal Revenue Code;

(C) An individual retirement account described in § 408(a) of the Internal Revenue Code;

(D) An individual retirement annuity described in § 408(b) of the Internal Revenue Code;

(E) Effective January 1, 2002, an annuity contract described in § 403(b) of the Internal Revenue Code;

(F) Effective January 1, 2002, a plan eligible under § 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system; or

(G) Effective January 1, 2008, a Roth IRA described in § 408A of the Internal Revenue Code; and

(4) "Eligible rollover distribution":

(A) Means any distribution of all or any portion of the balance to the credit of the distributee, except that "eligible rollover distribution" does not include:

(i) Any distribution that is one (1) of a series of substantially equal periodic payments, not less frequently than annually, made for the life or the life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more;

(ii) Any distribution to the extent such distribution is required under § 401(a)(9) of the Internal Revenue Code;

(iii) The portion of any distribution that is not includible in gross income; provided, however, effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax

employee contributions that are not includible in gross income, but such portion may be transferred only:

(a) To an individual retirement account or annuity described in § 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in § 401(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred and earnings thereon, including, separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(b) On or after January 1, 2007, to a qualified defined benefit plan described in § 401(a) of the Internal Revenue Code or to an annuity contract described in § 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred and earnings thereon, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

or

(c) On or after January 1, 2008, to a Roth IRA described in § 408A of the Internal Revenue Code; and

(iv) Any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of § 415 of the Internal Revenue Code or any

distribution that is reasonably expected to total less than two hundred dollars (\$200) during the year or any greater amount as provided under Treasury Regulation § 1.401(a)(31)-1, Q&A-11; and

(B) Includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in § 414(p) of the Internal Revenue Code.

(c) Prior to making a direct rollover, the retirement system may require the individual requesting the direct rollover to establish that the receiving plan or account meets the requirements of this section and the Internal Revenue Code.

(d) This section shall be administered in accordance with the direct rollover provisions of the Internal Revenue Code.

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 16. This act shall take effect upon becoming a law, the public welfare requiring it.